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REMARKS/DISCUSSION OF ISSUES

Claim 9 is amended to correct a typographical error. Claims 1-12 are pending in the application.

Yet again, the Examiner is respectfully requested to acknowledge the claim for priority and receipt of certified copies of all the priority documents.

Reexamination and reconsideration are respectfully requested in view of the following Remarks.

35 U.S.C. § 103

The Office Action rejects: claims 1-12 under 35 U.S.C. § 103 over Gibbs et al. U.S. Patent 6,169,725 ("Gibbs") in view of Zintel et al. U.S. Patent 6,547,066 ("Zintel").

Applicants respectfully traverse those rejections and submit that all of the claims 1-12 are patentable over the cited prior art for at least the following reasons.

Claim 1

Among other things, the system of claim 1 includes an intermediate device including a module for communicating between an API emulator in a remote device and an API in the intermediate device using remote protocols, establishing a substantially transparent communication path between the portable application program in the remote device and the API in the intermediate device.

The Office Action states that Gibbs discloses such an intermediate device including a module for communicating between an API emulator in a remote device and an API in the intermediate device using remote protocols, establishing a substantially transparent communication path between the portable application program in the remote device and the API in the intermediate device, citing the 1394 Communications Media Manager (CMM) of Gibbs as supposedly corresponding to the recited module for communicating between an API emulator in a remote device and an API in the intermediate device using remote protocols.

Applicants respectfully disagree.

As its name indicates, the 1394 communications media manager of Gibbs

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provides bus access to a 1394 bus. Gibbs shows the 1394 CMM in FIG. 5. The Examiner's attention is respectfully drawn to compare FIG. 5 in Gibbs with FIG. 1 of the present application also showing 1394 CMM as element 50, and FIG. 4B where the 1394 CMMs for intermediate device 130 and device 150 are labeled with reference numerals 232 and 252, respectively. Note that in the embodiment of FIG. 4B of the present application, the module is element 330 in intermediate device 130, which actually provides communication between API emulator 310 in remote device 110 and API 236 in intermediate device 130 **using TCP/IP remote protocols.**

Very clearly, Gibbs' 1394 CMM does not and cannot provide communication between an API emulator in a remote device and an API in the intermediate device **using remote protocols.**

So Applicants respectfully submit that no combination of Gibbs and Zintel could ever produce the system of claim 1.

Also among other things, the system of claim 1 includes a remote device operative to load an API emulator operative to provide a callable interface for functions of the in-home application protocol, and to supply this API functionality by communicating with a module in the intermediate device using remote protocols.

At last, this Office Action fairly admits that Gibbs fails to disclose or suggest any remote device including this combination of features.

However, the Office Action teaches a "remotely control device" (sic) having all of these features, and that it would have been obvious to one of ordinary skill in the art at the time the invention was made to "apply the teaching of Zintel" to Gibb's system "because the remote device is well-known as a remote control devices (sic), and since a module's role is a controller of other in-house devices, it is used to communicate with the remote device."

At the outset, this statement is so grammatically flawed as to make its comprehension impossible without resorting to some amount of guesswork.

Nevertheless, Applicants respectfully submits that no combination of the teachings of Gibbs and Zintel would have led anyone of ordinary skill in the art at the time the invention was made to have produced the system of claim 1. In particular,

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neither <u>Gibbs</u> nor <u>Zintel</u> discloses a remote device operative to load an API emulator
operative to provide a callable interface for functions of the in-home application
protocol, and to supply this API functionality by communicating with a module in the
intermediate device using remote protocols

As taught for example at page 1, lines 7-8, and 17-20 of Applicants'
specification, a remote device is "remote", and not an element of the in-home
network, nor therefore is it equipped with the in-home protocols. This is consistent
with the <u>separate</u> recitations in claim 1 of "an in-home network" <u>and</u> "a remote
device." Claim 1 specifically recites that that the remote device communicates with
a module in an intermediate device (which is part of the in-home network) using
remote protocols "including <u>a remote application protocol which differs from the
in-home application protocol</u>." Thus, for example, as Applicants have disclosed, a
remote device may communicate with a module in an intermediate device of an in-
home network using remote protocols (e.g., via the Internet), while the in-home
devices may communicate with each other using in-home protocols (e.g., HAVi
protocols). Also as recited in claim 1, the remote device is <u>operative to load an API
emulator</u> of the in-home application protocol (e.g., an HAVi Java API emulator) so
that it can provide a callable interface for functions of the in-home application
protocol. For example, as taught at page 6, lines 12-20 of Applicants' specification:

> "Unlike the real HJA layer 236 as shown in Fig. 4A, the HJA emulator
> 310 does not issue HAVi messages directly to a HAVi device. Instead,
> The HJA emulator 310 ensures that the interaction between itself and
> the Havlet 238 results in a same interaction with the real HJA 236,
> which actually provides the functionality. So, the HJA emulator 310
> 'mimics' the HJA layer 236 by reporting the fact that HJA was called by
> the HAVi applet 238 and details about the call (like parameters) to the
> intermediate device 130. The intermediate device 130 is loaded with an
> additional module 330 which retrieves the information supplied to it by
> the HJA emulator 310 and issues the corresponding call to the HJA

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interface 236."

The Office Action does not cite any reference numeral of any element in any of the 50(!) figures of Zintel as supposedly corresponding to the remote device having the features of claim 1. Instead, the Office Action very vaguely cites large portions of text from cols. 1, 4, 6, 13 and 15 — without any explanation — as supposedly the remote device having the features of claim 1.

Applicants respectfully submit that nowhere in the cited text, or elsewhere, does Zintel disclose the remote device having the features of claim 1. In that regard, Applicants note, for example, that FIG. 2 of Zintel, mentioned in the cited text, does not show any remote device as recited in claim 1. For example, user control points 104, 105 communicate with controlled devices 106 and 107 and bridged devices 122 using UPnP protocols (see e.g., col. 13, lines 1-4).

Accordingly, for at least these additional reasons, Applicants respectfully submit that no combination of Gibbs and Zintel could ever produce the system of claim 1.

Furthermore, Applicants respectfully traverse the proposed combination of Gibbs and Zintel as being improper. M.P.E.P. § 2144.01 provides that:

"Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art."

Here, the Office Action does not cite anything at all in support of its proposed motivation to modify Gibbs' system to add a remote device having all of the features recited in claim 1. A rejection under 35 U.S.C. § 103 must be based on objective evidence of record, and cannot be supported merely on subjective belief and unknown authority. M.P.E.P. § 2144.03 provides that:

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"there must be some form of evidence in the record to support an assertion of common knowledge. <u>See</u> <u>In re Lee</u>, 277 F.3d at 1344-45, 61 USPQ2d at 1434-35 (Fed. Cir. 2002); <u>In re Zurko</u>, 258 F.3d at 1386, 59 USPQ2d at 1697 (holding that general conclusions concerning what is "basic knowledge" or "common sense" to one of ordinary skill in the art without specific factual findings and some concrete evidence in the record to support these findings will not support an obviousness rejection)."

(Emphasis added). <u>See also</u> <u>In re Lee</u>, 277 F.3d at 1343-44, 61 USPQ2d at 1433-34 (Fed. Cir. 2002) (the examiner's finding of whether there is a teaching, motivation or suggestion to combine the teachings of the applied references must not be resolved based on "subjective belief and unknown authority," but must be "based on objective evidence of record.").

No such concrete evidence has been provided by the Examiner here, nor did the Examiner submit an affidavit as required by 37 C.F.R. § 1.104(d)(2) if this proposed motive were based on facts within his personal knowledge (<u>see</u> M.P.E.P. § 2144.03). Applicants request such an affidavit if this rejection continues to be maintained based a motive for modification not explicitly suggested in the prior art.

Accordingly, for at least these reasons, Applicants respectfully submit that claim 1 is patentable over the cited prior art.

<u>Claims 2-11</u>

Claims 2-11 depend from claim 1 and are therefore deemed to be patentable for at least the reasons set forth above with respect to claim 1, and for the following additional reasons.

<u>Claim 8</u>

In the system of claim 8, the remote device is operative to load the portable application program and/or API emulator from an intermediate device.

Applicants respectfully submit that no such feature is discloses in any of the

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various portions of cited text in <u>Zintel</u>. Furthermore, the Office Action does provide any motivation that supposedly would have led one to modify <u>Gibbs</u> system to include a remote device operative to load the portable application program and/or API emulator from the intermediate device. Therefore, the proposed combination of <u>Gibbs</u> and <u>Zintel</u> with respect to claim 8 is traversed.

Accordingly, for at least these additional reasons, Applicants respectfully submit that claim 8 is patentable over the cited prior art.

Claim 9

In the system of claim 9, the remote device is operative to load the portable application program and/or API emulator from an in-home device, other than an intermediate device, via the intermediate device.

Applicants respectfully submit that no such feature is discloses in any of the various portions of cited text in <u>Zintel</u>. Furthermore, the Office Action does provide any motivation that supposedly would have led one to modify <u>Gibbs</u> system to include a remote device operative to load the portable application program and/or API emulator from the intermediate device. Therefore, the proposed combination of <u>Gibbs</u> and <u>Zintel</u> with respect to claim 9 is traversed.

Accordingly, for at least these additional reasons, Applicants respectfully submit that claim 9 is patentable over the cited prior art.

Claim 12

Among other things, the method of claim 12 includes: (1) a <u>remote device</u> **<u>loading and executing an API emulator</u>** operative to provide a callable interface for functions of an in-home application protocol, and to supply this API functionality by communicating with a module in the intermediate device using the remote protocols; and (2) an intermediate device loading and executing **<u>a module for communicating</u> <u>between the API emulator in the remote device</u>** and an API in the intermediate device, establishing a substantially transparent communication path between a portable application program in the remote device and the API in the intermediate device.

Applicants traverse the proposed combination of <u>Gibbs</u> and <u>Zintel</u> as being

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improper for the reasons explained above with respect to claim 1. Furthermore, for similar reasons to those set forth above with respect to claim 1, Applicants respectfully submit that neither Gibbs nor Zintel discloses or suggests any such features, and therefore no possible combination of Gibbs and Zintel could ever produce the method of claim 12 including these features.

Accordingly, for at least these additional reasons, Applicants respectfully submit that claim 12 is patentable over the cited prior art.

CONCLUSION

In view of the foregoing explanations, Applicants respectfully request that the Examiner reconsider and reexamine the present application, allow claims 1-12 and pass the application to issue. In the event that there are any outstanding matters remaining in the present application, the Examiner is invited to contact Kenneth D. Springer (Reg. No. 39,843) at (571) 283-0720 to discuss these matters.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment (except for the issue fee) to Deposit Account No. 50-0238 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17, particularly extension of time fees.

Respectfully submitted,

VOLENTINE FRANCOS & WHITT, P.L.L.C.

Date: 5 May 2006   By: _____
                                  Kenneth D. Springer
                                  Registration No. 39,843

VOLENTINE FRANCOS & WHITT, P.L.L.C.
11951 Freedom Drive, Suite 1260
Reston, Virginia 20190
Telephone No.: (571) 283-0724
Facsimile No.: (571) 283-0740

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